IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15543 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHSANA DISTRICT PANCHAYAT

Versus

JASWANTLAL A. BRAHMBHATT

Appearance:

1. Special Civil Application No. 15543 of 2003

MR HS MUNSHAW for Petitioner No. 1-1/A

MR PARESH UPADHYAY for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 11/03/2004

ORAL JUDGEMENT

1. This matter came to be admitted by order dated 18th December 2003 and an ad-interim relief in terms of

paragraph 8(c) was granted. Civil Application No.1132 of 2004 was preferred by the respondent pressing for a relief under Article 226(3) of the Constitution of India. However, as the matter refers to pensionary benefits to the respondents, it was agreed between and suggested by the parties to finally argue the matter, and, considering the peculiar circumstances, the matter was finally heard and is being decided today.

2. The learned advocate for the petitioners has placed on record a draft amendment, which is allowed and the amendment is ordered to be carried out forthwith.

3. The petitioners, Mehsana District Gram Panchayat and another, are aggrieved by the order passed on 16th August 2000, by the Gujarat Civil Services Tribunal, Gandhinagar, in Appeal No.334 of 1998.

4. In order that the contentions raised before this Court can be properly appreciated, certain facts need to be stated:

4.1 The respondent came to be appointed on 25th April 1961 as an Agricultural Assistant by the Superintending Agricultural Officer, Baroda. However, by virtue of closure of the scheme on 7th October 1964, and, as per the Government policy, he was absorbed by the District Panchayat, Mehsana, from 1st March 1966. It would be appropriate to note at this stage that what had happened during 1964 to 1966 is not part of the record. However, the respondent, by order dated 4th June 1986, was placed in the gradation list of Agricultural Assistant considering his report dated 28th March 1985 and the order dated 4th September 1964 of the Divisional Agricultural Officer, Baroda, and his name was removed from the gradation list of Gram Sevak. On this order being passed, the respondent pressed for the benefit of deemed date of promotion in the cadre of Extension Officer, Agricultural, with effect from 1st February 1980, as his juniors, namely, Mr. D.M. Patel and Mr. Dave, were given promotion from that date. That having been denied despite several representations, the respondent preferred Appeal No.334 of 1998 before by the Gujarat Civil Services Tribunal, Gandhinagar, and, the Tribunal, by accepting the appeal, directed the petitioners to give the benefit of deemed date of promotion to the present respondent with effect from 1st February 1980, when his juniors came to be promoted.

4.2 The petitioner-Panchayat is aggrieved by the said order of the Tribunal on the ground that the so-called

juniors, Mr. Patel and Mr. Dave, were appointed as Agricultural Assistant from the beginning whereas the respondent was initially appointed as Gram Sevak and was given benefit of Agricultural Assistant ex-gratia by order dated 4th June 1986 and, therefore, he would not be entitled to the benefit of deemed date of promotion when he is, ultimately, promoted as Extension Officer, Agriculture. It is also the case of the petitioners that the respondent had waived his right of deemed date by communication dated 6th November 1992, Annexure "B" to the petition, and, therefore, the Tribunal committed an error in granting the relief.

4.3 Learned advocate, Mr. Munshaw, appearing for the petitioners, has reiterated these grounds and submitted that the petition may be allowed.

5. Learned advocate, Mr. Paresh Upadhyay, appearing for the respondent, has taken this Court through the affidavit-in-reply and indicated that the petitioners have not approached this Court with clean hands and have suppressed certain material facts. He has drawn the attention of this Court to the annexure to the affidavit-in-reply, which indicates that Mr. D.M. Patel was appointed as Gram Sevak and was sent for training. He has also indicated that the waiver was given in light of Government Resolution dated 5th July 1991 and, pursuant to Government Resolution dated 16th August 1994, even recovery was effected and an endorsement was made in the service book. He submitted that these material aspects are not brought to the notice of this Court for the reasons best known to the petitioners.

6. Having given a close look to the documents on record and the order impugned herein, this Court finds that no error either on fact or law can be said to have been committed by the Tribunal while passing the impugned order and this Court, therefore, is not required to entertain this petition in exercise of its powers under Article 227 of the Constitution. It is clear that the Tribunal has given due consideration to the order dated 4th June 1986 quoted in the impugned order itself and has correctly interpreted the same. No other interpretation could have made than what is made by the Tribunal itself. Further, the case of the petitioners that the junior to the respondent, Mr. Patel, was appointed as Agricultural Assistant from the beginning falls to ground by a copy of the order dated 19th June 1969 where it is indicated that the respondent and Mr. Patel were sent for training of Gram Sevak. Learned advocate Mr. Munshaw has no answer to this and, therefore, the contention of the petitioners

that Mr. D.M. Patel was appointed as Agricultural Assistant from the beginning and continued as such cannot be accepted as true factually. In light of this factual scenario and, even ignoring this scenario, considering the order dated 4th June 1986, the petitioners have no case and the petition, therefore, must fail. The petition stands dismissed. Rule is discharged. The ad-interim relief granted earlier stands vacated. There shall be no order as to costs.

(A.L. Dave, J.)

(swamy)